

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 7131 OF 2018

Bhagwat Munjabhau Shelke

..

Petitioner

Versus

The State of Maharashtra and others

..

Respondents

Shri. A. S. Deshmukh, Advocate for Petitioner.

Smt. P. V. Diggikar, A.G.P. for Respondent No. 1.

Shri. S. D. Dhongade, Advocate for Respondent Nos. 2 and 3.

**CORAM : S.V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATED : 29th November, 2018

PER COURT:

. The petitioner was appointed as a 'Measurer' purportedly on compassionate ground under order dated 09.01.2015. Under order dated 20.07.2016, the petitioner was terminated from service on the recommendation of the 'Committee – B' formed under Government circular dated 26.08.2014, on the ground that the petitioner had

suppressed the true information while filling the Attestation Form.

2. The petitioner assailed the order of termination before the Maharashtra Administrative Tribunal, Aurangabad by filing Original Application No. 606 of 2016 . The Tribunal dismissed the Original Application, aggrieved thereby the present writ petition.

3. Mr. Deshmukh, learned counsel for the petitioner submits that the Attestation Form was filled and submitted on 15.05.2015. The column 11 (a) dealt with the information to be given about criminal case filed against the petitioner.

4. The learned counsel submits that there were criminal cases filed against the petitioner. The criminal case bearing Crime No. 42 of 2011 was filed under Sections 420, 468, 471, 473, 201 and 394 of the Indian Penal Code, 1860. The petitioner was acquitted in the said case on 16.02.2012. The second criminal case bearing Crime No. 48 of 2011 was filed under sections 420, 468 and 471 of the IPC. In the said case also the petitioner was acquitted on 31.08.2012. The third case was filed under section 138 of the Negotiable Instruments Act. The matter was settled and the complainant had withdrawn the case on 01.09.2014.

5. The learned counsel submits that as on the date when the Attestation Form was filled in no criminal case was pending against the petitioner. The petitioner was under bonafide belief that as no criminal case is pending, the said column is not required to be filled in. The petitioner was acquitted in the criminal case filed against him in the year - 2012 itself. The learned counsel submits that the petitioner was appointed on Class - III post. The acquittal in the criminal case vis-a-vis the basis on which the petitioner has been appointed ought to have been considered by the appointing authority. The learned counsel relies on the judgment of the Apex Court in a case of **Avtar Singh Vs. Union of India and others**, reported in **2016 (8) SCC 471** and submits that if acquittal is recorded in a case, then the employer is required to consider all the relevant facts available as to the antecedents and it is the employer who is to take decision with regard to the continuation of the service of the employee. In the present case, the employer has not taken a conscious decision of the effect of acquittal in the criminal case. The employer has relied upon the report of the committee purportedly constituted pursuant to the Government Resolution dated 26.08.2014. The constitution of the committee was also not in consonance with the said Government Resolution. The appointing authority of the petitioner is the

Superintending Engineer, however the Superintending Engineer deputed the Executive Engineer, his subordinate as a member of the committee. The said person who was deputed was also not a full fledged Executive Engineer but was an In-charge Executive Engineer. As the Constitution of the committee itself was improper and not in tune with the said Government Resolution, the recommendation made by the committee could not have been acted upon. Moreover, the appointing authority has not applied its mind to the acquittal given by the criminal Court. More particularly, when the acquittal was three years prior to the filling in the Attestation Form. It is not the case that the petitioner was appointed on a high ranking post. The petitioner was appointed as a Class - III employee. According to the learned counsel, as the petitioner has been honorably acquitted in the criminal case not filling in column 11 (a) of the Attestation Form would not be fatal. The order of termination deserves to be set aside. The learned counsel for the petitioner in alternate submits that the employer be directed to reconsider the judgments giving acquittal to the petitioner and be directed to take a fresh decision.

6. Mr. Deshmukh, the learned counsel and the learned A.G.P. supports the order passed by the tribunal.

7. We have considered the submissions canvassed by the learned counsel for the parties.

8. The petitioner it appears has been appointed as a Measurer pursuant to the appointment order dated 09.01.2015. The petitioner is required to fill in the Attestation Form. The petitioner filled in the Attestation Form on 15.05.2015. Column 11 (a) of the Attestation Form is in regional as well as English language. The said clause reads thus;

“ (11) (अ):- तुम्हाला न्यायालयाकडुन कोणत्याही अपराधाबद्दल आतापर्यंत कधीही अटक करण्यात/स्थानबध्द करण्यात/वृध्द करण्यात/दंड करण्यात/सिध्ददोषी ठरविण्यात आले आहे काय, किंवा लोकसेवा आयोगाकडुन त्यांच्या परीक्षांना/निवडींना बसण्यास तुम्हाला मनाई करण्यात आली आहे काय, किंवा अनर्ह ठरविण्यात आले आहे काय, किंवा कोणत्याही विद्यापीठाकडुन किंवा इतर कोणत्याही शैक्षणिक प्राधिकरणाकडुन/संस्थेकडुन कोणत्याही परीक्षेस बसण्यास मनाई करण्यात आली आहे काय/काडुन टाकण्यात आले आहे काय? ”

11. (a):- Have you ever been arrested /prosecuted/kept under detention, or bound down/friend/convicted by a court of law for any offence or debarred/disqualified by any Public- Service Commission from appearing at its examinations/selections or debarred from taking any

examination/rusticated by any university or any other educational authority/Institution?

9. The petitioner as against the said column has endorsed "नाही " meaning 'No'. It is the matter of record and not disputed by the petitioner that the petitioner was arrested in Crime No. 48 of 2011 for the offences punishable under section 420, 468 and 470 and this fact was consciously suppressed by the petitioner.

10. We have gone through the judgments in the criminal cases acquitting the petitioner. In criminal case bearing crime No. 42 of 2011, it is observed by the Magistrate that the prosecution failed to prove its case beyond reasonable doubt. Whereas in Crime No. 48 of 2011, the Court came to the conclusion that the investigating officer with a view to help the accused persons deliberately conducted improper investigation and left deficiencies. He directed enquiry against the said police constable Mr. Mundhe. In both the criminal cases, the allegations against the accused were serious, viz. they had accepted huge amount to lure the complainants and assured the complainants that they would be given appointment in Government service.

11. It would appear that the committee was constituted as per the Government Resolution dated 26.08.2014 to consider the case of the petitioner. The Collector who is the Chairman of the committee was present, so also the Deputy Secretary of Law and Judiciary Department, Mantralaya, Mumbai was also present. On behalf of the appointing authority, it is stated that the Executive Engineer was present and was deputed by the Superintending Engineer. The committee has considered the judgments in the criminal cases. The same has been considered by the appointing authority and after considering the same the decision has been taken by the appointing authority. The ground taken by the petitioner that it was his bonafide mistake in writing 'No' as against column no. 11 (a) can not be accepted. The said column is in regional as well as English language and the petitioner had filled in the column in regional language. The petitioner was arrested in the crime. The fact that the petitioner was arrested is within his knowledge which ought to have been disclosed by him. The parameters laid down by the Apex Court in a case of Avtarsing (supra) are satisfied. The offences against the the petitioner were serious one, and such an employee certainly can not be allowed to continue in service.

12. The tribunal has not committed any error while rejecting the

Original Application.

13. Writ petition as such is dismissed. No costs.

[**R. G. AVACHAT, J.**]

[**S. V. GANGAPURWALA, J.**]

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